

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
GTC Petition for Rulemaking)
to Establish Rules Regarding)
Carrier-to-Carrier Transfers)
of Subscriber Bases)

CC Docket No. _____

U S WEST COMMUNICATIONS, INC.
STATEMENT IN SUPPORT OF PETITION FOR RULEMAKING

U S WEST Communications, Inc. ("U S WEST"), pursuant to 47 C.F.R. Section 1.405(a),¹ submits this Statement in support of the Petition for Rulemaking ("Petition") of Global Telecompetition Consultants, Inc. ("GTC"). GTC filed its Petition with the Federal Communications Commission ("Commission") on December 30, 1999. The Petition has not yet been publicly noticed.²

In its Petition, GTC notes that since the Commission adopted the Second Report and Order in CC Docket No. 94-129³ (which amended the prior carrier-

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¹ 47 C.F.R. § 1.405(a).

² Given that the GTC Petition has not been publicly noticed to date, U S WEST files a responsive Statement.

³ See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and

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change rules), carriers in increasing numbers have sought -- and the Common Carrier Bureau ("Bureau") has granted -- waivers allowing for the change of an end-user customer's carrier as the result of subscriber base transfers.⁴ GTC requests that the Commission adopt a general rule in connection with these carrier-to-carrier subscriber base transfers, as opposed to using a waiver-based approach to deal with them.⁵

U S WEST supports the GTC Petition and the logic expressed therein.

Applying the carrier-change rules to subscriber-base sales, or other circumstances

Order, 14 FCC Rcd. 1508 (1998) appeal in abeyance sub nom. MCI WorldCom, Inc. v. FCC, No. 99-1125 (D.C. Cir.) ("Second Report and Order").

⁴ See GTC Petition at 5. See also In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; International Exchange Communications, Inc. Request for Waiver, Order, 14 FCC Rcd. 15268, 15269-70 ¶ 4 (1999) ("IEComm Order") (waiver granted to allow transfer of customer base pursuant to asset purchase agreement with another carrier), and citing to WAIT Radio v. FCC, 418 F.2d at 1159; id. at 15270 ¶ 5 (granting International Exchange Communications, Inc. a waiver in conjunction with the purchase of International Telecommunications Corp.'s assets); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Iowa Telecommunications Services Petition for Waiver, CC Docket No. 94-129, Order, DA 99-2777, rel. Dec. 21, 1999 (waiver granted to allow Iowa Telecommunications Services ("ITS") to change the preferred carrier of those consumers currently presubscribed to GTE of the Midwest to ITS).

While GTC does not specifically analyze the reason for this, it is clear that it results from the application of the Commission's current rules to local and local, long distance carrier changes. The Commission concluded that the Congressional intent as expressed in Section 258 was to have the Commission adopt verification rules that were applicable to changes in both local exchange and intrastate and interstate telephone toll service. See Second Report and Order, 14 FCC Rcd. at 1557 ¶ 81. Generally, the sale of a subscriber base would not necessarily involve the change of interstate interexchange carrier (the scope of the prior rules), but clearly does impact on local and, often, local, long distance service.

⁵ See GTC Petition at 3.

requiring the transfer of customers (or accounts or accounts receivable),⁶ such that *seriatim* waiver filings are necessary does not materially aid in the protection against “slamming” -- the problem that Congress sought to ameliorate.⁷ It does, however, burden carriers with a bureaucratic requirement that advances no discernible public interest and impedes the relative ease of property alienation. Moreover, this category of sales is already reviewed quite extensively in connection with the Commission’s Part 63 procedures for the discontinuance, reduction and impairment of service.⁸ For all these reasons, U S WEST agrees with GTC that “the waiver procedures are burdensome, time-consuming, and wasteful of Commission resources.”⁹

⁶ Carrier-to-carrier subscriber base transfers can also result from, among other transactions, the dissolution of joint ventures, bankruptcy sales, and the purchase of subscriber accounts.

⁷ A review of the Conference Report, the Senate Report and the House Report, passed in connection with the enactment of the Telecommunications Act of 1996, reveals no discussion of slamming within the context of carrier-to-carrier subscriber base transfers or similar transactions. See Conference Report on S.652, 104th Congress 2d Session, Report 104-458, the Senate Report on S.652, 104th Congress 1st Session, Report 104-230, and the House Report on H.R. 1555, 104th Congress 1st Session, Report 104-204.

⁸ Generally, waivers of Commission rules are appropriate when special circumstances exist (and the approval is consistent with the public interest). See, e.g., Wait Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Inasmuch as these carrier-to-carrier subscriber base transfers are fairly routine, it would appear that they do not generally raise “slamming” issues of special circumstance that require regulatory treatment beyond that required under the Part 63 rules.

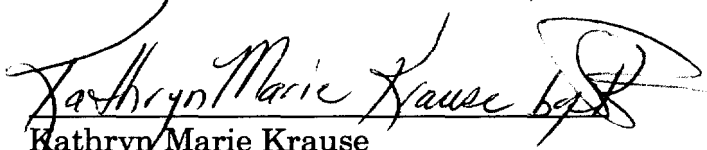
⁹ GTC Petition at 3. For example, in addition to the perusal that U S WEST underwent pursuant to Part 63 with respect to its transfer of eight exchanges to Citizens Telecommunications Company of North Dakota (see U S WEST’s Section 63.71 Application Concerning Eight North Dakota Exchanges, NSD File No. WPD-

The Commission should grant the GTC Petition and institute a rulemaking proceeding, preferably with an expedited comment cycle (given that the issue is not complex or highly strategic), in hopes of arriving at a position where carriers making carrier-to-carrier subscriber base transfers are no longer required to seek a waiver of the Commission's carrier-change rules as an attendant requirement of such transfer. Such action would be consistent with sound fiscal and bureaucratic policy, commercial practicality and the public interest.

Respectfully submitted,

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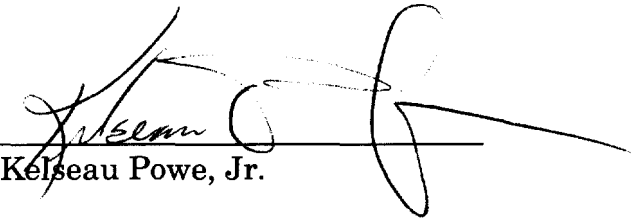
Of Counsel,
Dan L. Poole

March 3, 2000

444, filed Nov. 24, 1999), U S WEST has had to draft and will file a Petition for Waiver from the requirements of the Commission's carrier-change rules. As a result, two different attorneys have crafted filings and two different divisions of the Commission will need to review the various filings. This additional labor does nothing to materially advance Congressional intent in this matter or the public interest.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 3rd day of March, 2000, I have caused a copy of the foregoing **U S WEST COMMUNICATIONS, INC. STATEMENT IN SUPPORT OF PETITION FOR RULEMAKING** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.


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